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THE GOLDMAN SACHS GROUP, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRISTIE SMITH, SHAWNA SANTOS, GEOFF HEWITT, COURTNEY HEWITT, ANGEL AGUILAR, EMILY AGUILAR, JUAN AGUILAR, COREY ALDRIDGE, REEF CHARLOTTE ALLEN, SABRINA DOLORES ALVA, CAROL ARCHEY, CONSTANCE AVILES, a minor by and through her Guardian Ad Litem, Marcelino Paul Aviles, **DANIEL AVILES**, a minor by and through his Guardian Ad Litem, Vincent Aviles, **MARCELINO M. AVILES**, a minor by and through his Guardian Ad Litem, Marcelino Paul Aviles, **DIEGO AVILES, DONNA AVILES, EZRA AVILES, KAYTLYNN AVILES, MARCELINO PAUL AVILES, TAMMY AVILES, VINCENT AVILES, ALIYYAH BACA**, a minor by and through her Guardian Ad Litem, Juanita Lara, **THEODORE BADMI, DARON S. BANKS, JOANNE A. BARRIES, ANNICA BEARDSHEAR**, a minor by and through her Guardian Ad Litem, Mandy Hart-Beardshear, **DONALD WAYNE BEARDSHEAR, LUNA BENAVIDEZ**, a minor by and through her Guardian Ad Litem, Kaytlynn

Case No. 5:23-CV-02120

**DEFENDANT THE GOLDMAN
SACHS GROUP, INC.'S NOTICE
OF REMOVAL**

1 Aviles, **SEBASTIAN BENAVIDEZ**, a
2 minor by and through his Guardian Ad
Litem, Kaytlynn Aviles, **BRANDY**
3 **BOHATY, CHERISH BOHATY**, a
minor by and through her Guardian Ad
Litem, Brandy Bohaty, **ETHAN**
4 **BOHATY, JACOB BORDIER,**
5 **CLAUDE BRACKEEN, ERIC**
6 **BRAND, NATHAN BRAND,**
7 **PATRICIA BRAND, DON BROWN,**
PATRICIA BROWN, ELIZABETH
8 **ANN BURNS, BERETTA BURNS**, a
minor by and through her Guardian Ad
Litem, Stephanie Burns, **GLADYS**
9 **BURNS**, a minor by and through her
Guardian Ad Litem, Stephanie Burns,
HELENA BURNS, a minor by and
10 through her Guardian Ad Litem,
Stephanie Burns, **KEETH BURNS,**
11 **STEPHANIE N. BURNS,**
MARGARITA LUCINA
12 **CASTANEDA, LEAH CAZAREZ,**
GENE CHAVIRA, KAREN
13 **CHAVIRA, MARK CHAVIRA,**
14 **RICHARD CHAVIRA SR.,**
15 **SAMANTHA COFFEE, JAMIE**
16 **COPELAND, KENNETH CORDOVA,**
a minor by and through his Guardian Ad
17 Litem, Emily Aguilar, **LUCILLE**
18 **CORDOVA**, a minor by and through her
Guardian Ad Litem, Emily Aguilar,
MARCELINE CORDOVA, a minor by
19 and through his Guardian Ad Litem,
Emily Aguilar, **ANTHONY**
20 **CORDOVA, ROBERT DALE,**
KAREN DANIELS, ROBERT DEE,
21 **ROBERT DERICK, DESIRE**
22 **DEWEY, TAMARA DINGMAN,**
23 **MERCEDES DOMINGUEZ,**
MARIANA DONALDSON, ARIA
24 **DOWNING**, a minor by and through her
Guardian Ad Litem, Lorraine Mesa,
CINDY S. DOWNING, DAVID
25 **DOWNING, MICHAEL DOYLE,**
KATHLEEN EATON, CORRA LEE
26 **EICHENBERGER, TERESA**
27 **EICHENBERGER, NATHAN**
28 **ENRIQUEZ**, a minor by and through his

1 Guardian Ad Litem, Juanita Lara,
2 **DESTINII FARAGO, MICHAEL**
3 **FLETCHER, ANGEL V. FLORES,**
4 **GARY FLORES, JANELL FLORES,**
5 **JOSE V. FLORES, PATRICIA**
6 **FLORES, PATRICK ADAM**
7 **FLORES, PAUL FLORES, SHIRLEY**
8 **FLORES, TRISHA FLORES,**
9 **ZACHARIAH FLORES**, a minor by
10 and through his Guardian Ad Litem,
11 Stephanie Guerrero, **CRYSTAL**
12 **FLORES-KANE, ASHLEY FLORES-**
13 **RADTKE, FAITH FONNER**, a minor
14 by and through her Guardian Ad Litem,
15 Barbara Pitts, **SAMANTHA FORVITO,**
16 **IAN FRAZIER, NICOLE ALLISON**
17 **FREDERICK, SHANE FREDERICK,**
18 **DAVID R. FRITZ, LISA FRITZ,**
19 **CHARLES GALLEGOS, RUTH**
20 **GALLEGOS, AALIYAH GAMBLE,**
21 **ROSEMARY GAMBLE,**
22 **GUADALUPE GARCIA MENDOZA,**
23 **CHRISTOPHER GARDNER,**
24 **CHRISTIANO MICHAEL**
25 **GUARDADO**, a minor by and through
26 his Guardian Ad Litem, Christopher Juan
27 Guardado, **CHRISTINE ROSA**
28 **GUARDADO**, a minor by and through
 her Guardian Ad Litem, Christopher Juan
 Guardado, **CHRISTOPHER JOSEPH**
 GUARDADO, a minor by and through
 his Guardian Ad Litem, Christopher Juan
 Guardado, **CHRISTOPHER JUAN**
 GUARDADO, ADRIAN GUERRERO,
 a minor by and through his Guardian Ad
 Litem, Stephanie J. Guerrero,
 STEPHANIE J. GUERRERO,
 JOSEPH GUERRERO, a minor by and
 through his Guardian Ad Litem, Velsy
 Ortiz, **VICTORIA P HARPER**,
 BELINDA HARRIS, DENNIS
 HEMINGWAY, KATHLEEN
 HIMINGWAY, LINDA HENSLEY,
 PAUL HENSLEY, DANIEL
 HERNANDEZ, MARILYN Y.
 HERNANDEZ, DANIEL
 HERNANDEZ JR., a minor by and
 through his Guardian Ad Litem, Marilyn

1 Hernandez, **MATEO HERNANDEZ**, a
2 minor by and through his Guardian Ad
Litem, Marilyn Hernandez, **SOFIA**
3 **HERNANDEZ**, a minor by and through
her Guardian Ad Litem, Marilyn
4 Hernandez, **ANAYA HERRERA**, a
minor by and through her Guardian Ad
5 Litem, Juanita Lara, **JANICE**
HERRICK, **ELIJAH HOBBS**, a minor
6 by and through his Guardian Ad Litem,
Evette Velasquez, **ISAIAH HOWARD**,
TABITHA HOWARD, **MICHAEL**
7 **HUGHES**, **BRANDI IDEN**, **EDWARD**
IDEN, **SUSAN JAROZEWSKI**,
8 **VANESSA JARVIS**, **KELLY**
JEFFERY, **AXEL JIMENEZ**,
9 **BRISEIDA JIMINEZ**, a minor by and
through her Guardian Ad Litem, Lidia
10 Jimenez, **LEONEL JIMENEZ**, a minor
by and through his Guardian Ad Litem,
Lidia Jimenez, **LIDIA JIMENEZ**,
11 **XICOTENCALT JIMENEZ**,
MADISYN KANE, a minor by and
12 through her Guardian Ad Litem, Crystal
Flores-Kane, **ALLEN S. KANE JR.**,
VICTOR P. KEATON, **KGOSI**
13 **KESIILWE**, **DAVID KORNER**,
JESSE KORNER, **ROBERT KURTH**,
14 **JESSIE LARA**, a minor by and through
her Guardian Ad Litem, Juanita Lara,
15 **MACARIO LARA**, a minor by and
through his Guardian Ad Litem, Juanita
Lara, **VICTORIA LARA**, a minor by
16 and through her Guardian Ad Litem,
Juanita Lara, **JUANITA LARA**,
17 **BRENT LAUTZENHEISER**, **MARK**
LIZARRAGA, **ANTHONY LOPEZ**,
18 **LOUANNA LOPEZ**, **LOUISA**
LOPEZ, **SAleta LUNA-BORDIER**,
19 **JOSE MAGANA**, **MARIA U.**
MARQUEZ, **PAUL C. MARQUEZ**,
20 **DAVID MARTINEZ**, **SYLVIA**
MARTINEZ, **DOMINIC MCLING**, a
21 minor by and through his Guardian Ad
Litem, Candace Urban-McLing, **DYLAN**
22 **MERCHANT**, a minor by and through
his Guardian Ad Litem, Brandy Bohaty,
23 **LORRAINE MESA**, **ANGELINA**

1 **MESA**, a minor by and through her
2 Guardian Ad Litem, Lorraine Mesa,
3 **RENA MONTANO, ROBERT**
4 **MONTANO, LORA MONTOYA,**
5 **RAYMOND MONTOYA, CYNTHIA**
6 **G. MORROW, KEVIN MORROW,**
7 **CHERILYN MYERS, MEGAN**
8 **MYERS, TAMMY NASON, JACKIE**
9 **NELSON, BENJAMIN NEWTON,**
10 **DAVID NICHOLS, RAMONA**
11 **ORTEZ, VELSY ORTIZ, AIRES**
12 **PEREZ**, a minor by and through his
13 Guardian Ad Litem, Claudia Perez,
14 **CLAUDIA PEREZ, PAUL PEREZ**, a
15 minor by and through his Guardian Ad
16 Litem, Claudia Perez, **RIO PEREZ**, a
17 minor by and through his Guardian Ad
18 Litem, Claudia Perez, **LYNNZEY**
19 **PETERSON**, a minor by and through her
20 Guardian Ad Litem, Susan Jarozewski,
21 **NATHAN PETERSON, BARBARA A.**
22 **PITTS, LOREN PITTS, TABITHA**
23 **PITTS, DANIEL POWELL,**
24 **RHONDA POWELL, RICHARD**
25 **QUERFURTH, SANDRA QUINTON,**
26 **LUCA RADTKE**, a minor by and
27 through his Guardian Ad Litem, Ashley
28 Flores-Radtke, **DAVID RADTKE,**
 DELANIE RADTKE, COREY
 RAMIREZ, BARBARA RAY,
 ROBERT RENO, ABDON G
 RODRIGUEZ, MAGDALENA
 RODRIGUEZ, ABDON E.
 RODRIGUEZ, a minor by and through
 his Guardian Ad Litem, Magdalena
 Rodriguez, **MARIAH G.**
 RODRIGUEZ, a minor by and through
 her Guardian Ad Litem, Magdalena
 Rodriguez, **MARISOL L.**
 RODRIGUEZ, a minor by and through
 her Guardian Ad Litem, Magdalena
 Rodriguez, **SANTIAGO I.**
 RODRIGUEZ, a minor by and through
 his Guardian Ad Litem, Magdalena
 Rodriguez, **PAUL RYKEN, SHANA**
 SALINAS, JALYNN A. SANTOS,
 JEREMY SANTOS, JOHN
 ANTHONY SANTOS, WILLIAM

1 **ANTHONY SARAIVA, JOHN SAUM,**
2 **MELANIE SAUM, ALEXIS**
3 **SERAFIN, RAYMOND SERAFIN,**
4 **RYDER SERAFIN**, a minor by and
5 through his Guardian Ad Litem,
6 Raymond Serafin, **JAMIE SHANNON,**
7 **THOMAS SHANNON, RICCKO**
8 **ERMINIO MARSIANO SILVA JR.**, a
9 minor by and through his Guardian Ad
10 Litem, David Vincent Velasquez,
11 **MIKAYLA SIMPKINS, BRITTANY**
12 **SIMPSON, GERI SIMPSON,**
13 **RICHARD SIMPSON, CURTIS**
14 **SMITH, STEPHANIE SMITH,**
15 **JOSHUA SONG, ROGER STAGE,**
16 **CHRISTIAN STAPLEY**, a minor by
17 and through his Guardian Ad Litem,
18 Karen Stapley, **KAREN STAPLEY,**
19 **CHRIS STEWARD, TERESA**
20 **STEWARD, MARDELL STOVALL,**
21 **TERRENCE STOVALL, WILLIAM**
22 **STOVALL, SAVANNA TAFOYA,**
23 **ALEXANDRIA THOMAS, EZEKIEL**
24 **TRIPP, JERRY TRIPP, JACKIE**
25 **TRUJILLO, EVELYN TURNER,**
26 **ANTHONY VALLEJOS, GLORIA**
27 **VALLEJOS, MARAIAH T.**
28 **VALVERDE**, a minor by and through
her Guardian Ad Litem, Stephanie
Guerrero, **LEAH VELASQUEZ, MIA**
ROSE VELASQUEZ, a minor by and
through her Guardian Ad Litem, David
Vincent Velasquez, **NEHEMIAH**
VELASQUEZ, a minor by and through
his Guardian Ad Litem, Evette
Velasquez, **RAELYNN FAITH**
VELASQUEZ, a minor by and through
her Guardian Ad Litem, David Vincent
Velasquez, **BERNADETTE**
VELASQUEZ, MICIAH
VELASQUEZ-HOBBS, a minor by and
through his Guardian Ad Litem, Evette
Velasquez, **CINDY VELASQUEZ,**
DAVID VINCENT VELASQUEZ,
EVETTE VELASQUEZ, GREDAN
VELASQUEZ, JENNY VELASQUEZ,
LYDIA DEANNA VELASQUEZ,
DAVID VICKERS, BRANDY

1 **VICTORY, REANNA MARIA**
2 **WALKER-BANKS, AIDEN**
3 **WALKER-BANKS**, a minor by and
4 through his Guardian Ad Litem, Reanna
5 Walker-Banks, **ANGELA WEDDLE,**
6 **ONYX WIGHT**, a minor by and through
7 his Guardian Ad Litem, Brandy Bohaty,
8 **ANDREA WILLIAMS, DANIEL**
9 **WILLIAMS, JOHN WILLIAMS,**
10 **TERRY WILLIAMS, CLIFFORD**
11 **WOOLRIDGE**, and **MARC YSLAS**,

12 Plaintiffs,

13 vs.

14 **NURSERY PRODUCTS, LLP**, a
15 corporation; **SYNAGRO**
16 **TECHNOLOGIES, INC.**, a
17 corporation; **SYNAGRO WWT, INC.**,
18 a corporation; **THE GOLDMAN**
19 **SACHS GROUP, INC.**, a corporation;
20 and **DOES 1-100**, inclusive,

21 Defendants.

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1 PLEASE TAKE NOTICE that Defendant The Goldman Sachs Group, Inc.
 2 (“GS Group”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1332(a),
 3 1441(a), and 1446(b) to effect the removal of the above-captioned action, which
 4 was commenced in the Superior Court of California, San Bernardino County. Every
 5 named defendant has consented to GS Group’s filing of this Notice of Removal,
 6 which is proper for the reasons stated below.¹

7 **BACKGROUND**

8 1. On October 4, 2022, Christie Smith et al. (“Plaintiffs”) filed a
 9 complaint in the Superior Court of California, San Bernardino County. A first
 10 amended complaint (“FAC”) was filed on February 28, 2023. Ex. A. The FAC’s
 11 allegations involve substantially similar events as those alleged in *Blevins v.*
 12 *Synagro*, C.D. Cal. No. 5:22-cv-01866 and *Roberta Chavira-Walker and Gregory*
 13 *Chavira-Walker v. Nursery Products, LLP et al.*, C.D. Cal. No. 5:23-cv-00512,
 14 which GS Group removed from San Bernardino Superior Court on October 24,
 15 2022, and March 24, 2023, and are currently pending before this Court.

16 2. The FAC asserts the following causes of action: (1) Negligence, (2)
 17 Strict Liability for Ultrahazardous Activities, (3) Continuing Private Nuisance, (4)
 18 Permanent Private Nuisance, (5) Continuing Public Nuisance, (6) Permanent Public
 19 Nuisance, (7) Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §
 20 17200, *et seq.*), and (8) Trespass. FAC ¶¶ 85-189.

21 3. Plaintiffs allege that defendants GS Group, Synagro Technologies, Inc.
 22 (“Synagro Technologies”), Synagro-WWT, Inc. (“Synagro-WWT”), “Nursery
 23 Products, LLP”—a misnomer of Nursery Products, LLC (“Nursery Products”)²—

24 ¹ By filing this notice of removal, GS Group does not waive, and specifically
 25 preserves, all arguments and defenses to the FAC, including those arising from
 26 personal jurisdiction.

27 ² The FAC alleges that “Nursery Products, LLP … owns and operates the Nursery
 28 Products Hawes Composting Facility located at 14479 Cougar Road, Helendale,
 California 92342 in San Bernardino County.” FAC ¶ 9. Public records indicate that

1 and Does 1 through 100 (collectively, “Defendants”) engaged in a “negligent
 2 disregard for safety” related to the Nursery Products Hawes Composting Facility
 3 (“the Facility”). FAC ¶ 1.

4 4. Plaintiffs allege that Nursery Products, Synagro-WWT, and Synagro
 5 Technologies operated a joint venture with respect to their ownership and control of
 6 the Facility and refer to these Defendants as “Facility Defendants.” FAC ¶ 17. They
 7 allege that “each of the Defendants was the agent, servant, employee, and/or partner
 8 of each of the remaining Defendants.” *Id.* ¶ 15. Plaintiffs bring the second through
 9 sixth and eighth causes of action against the Facility Defendants and bring the first
 10 and seventh causes of action against all Defendants. *Id.* ¶¶ 85-189.

11 5. Plaintiffs allege that Facility Defendants have failed to comply with
 12 state and county regulations by, *inter alia*, processing excessive and unpermitted
 13 forms of waste, allowing waste and litter to accumulate at the facility, failing to
 14 comply with appropriate fire safety standards, and engaging in unpermitted off-site
 15 dumping. *See, e.g.*, FAC ¶¶ 33, 37, 44-46, 49-51, 65-67. Plaintiffs contend that
 16 Facility Defendants engaged in the aforementioned conduct despite knowing that
 17 “the risk of fire was likely.” *Id.* ¶ 47.

18 6. Plaintiffs allege that as a result of this conduct, on May 28, 2022,
 19 spontaneous combustion in a compost pile at the Facility caused a fire. FAC ¶¶ 56-
 20 63. They further allege that wind carried smoke, strong odors, and particulate
 21 matter from the fire to neighboring communities and that the fire injured local
 22 residents in various ways. *Id.* ¶¶ 64, 68-78.

23 7. GS Group’s counsel accepted service of the FAC and summons on GS
 24 Group’s behalf on September 26, 2023. A copy of the original complaint, FAC,

25
 26 Nursery Products, LLC operates that facility and has a matching business address.
 27 Decl. of Amari L. Hammonds (“Hammonds Decl.”), Exs. 1, 2. Furthermore,
 28 Plaintiffs contacted counsel for Nursery Products, LLC regarding service of the
 FAC. Hammonds Decl. ¶ 3.

1 Summons, Civil Case Cover Sheet, and all other state court papers served are
2 attached hereto as Exhibit A to this notice. Therefore, this Notice of Removal is
3 timely under the 30-day removal period. 28 U.S.C. § 1446(b); Fed. R. Civ. P.
4 6(a)(1)(C).

5 **THERE IS DIVERSITY OF CITIZENSHIP**

6 8. GS Group removes this action based on 28 U.S.C. §§ 1332(a),
7 1441(a), and 1446(b). Section 1332 gives this Court original jurisdiction over civil
8 actions between citizens of different States where the matter in controversy exceeds
9 the sum or value of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

10 9. The diversity requirement is satisfied where no party properly joined
11 and served as a defendant is a citizen of the same State as any plaintiff. 28 U.S.C.
12 §§ 1332(a)(1), 1441(b)(2). Here, Plaintiffs are citizens of the forum State
13 (California), and no defendant is a citizen of that State.

14 10. **Plaintiffs' Citizenship:** For diversity purposes, a person is a "citizen"
15 of the state in which he or she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704
16 F.2d 1088, 1090 (9th Cir. 1983). A person's domicile is the place where he or she
17 resides with the intention to remain or to which he or she intends to return.
18 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). Plaintiffs allege
19 that they reside and are domiciled in the State of California. FAC ¶¶ 1, 8, 25. GS
20 Group therefore also alleges that Plaintiffs are domiciled in and are citizens of the
21 State of California.

22 11. **Defendants' Citizenship:** A corporation is deemed a citizen in every
23 State in which it is incorporated and the State in which it has its primary place of
24 business. 28 U.S.C. § 1332(c)(1); *Johnson v. Columbia Props. Anchorage, LP*, 437
25 F.3d 894, 899 (9th Cir. 2006). In contrast, a limited liability company "is a citizen
26 of every state of which its owners/members are citizens." *Id.* The Supreme Court
27 has "consistent[ly] refus[ed] to extend the corporate citizenship rule to non-
28

1 corporate entities, including those,” like limited liability companies, “that share
 2 some of the characteristics of corporations.” *Id.*

3 12. GS Group is alleged in the FAC to be a Delaware corporation with its
 4 principal place of business in New York, New York. FAC ¶ 12. GS Group also
 5 alleges these facts. Accordingly, GS Group is deemed a citizen of Delaware and
 6 New York for the purposes of establishing diversity jurisdiction.

7 13. Synagro Technologies is a Delaware corporation with its principal
 8 place of business in Baltimore, Maryland. Grant Decl. ¶ 2; *see also* FAC ¶ 11
 9 (alleging same facts). Accordingly, Synagro Technologies is deemed a citizen of
 10 Delaware and Maryland for the purposes of establishing diversity jurisdiction.

11 14. Synagro-WWT is a Maryland corporation with its principal place of
 12 business in Baltimore, Maryland. Grant Decl. ¶ 3; Hammonds Decl., Ex. 1.
 13 Accordingly, Synagro-WWT is deemed a citizen of Maryland for the purposes of
 14 establishing diversity jurisdiction.³

15 15. Nursery Products is alleged in the FAC to be “a California corporation
 16 with its principal place of business in California.” FAC ¶ 9. However, Nursery
 17 Products is a limited liability corporation, not a corporation. As such, its citizenship
 18 is determined by the citizenship of its members. *Johnson*, 437 F.3d at 899; *see also*
 19 *id.* at 896-97.⁴ The FAC fails to identify Nursery Products’ members or allege their
 20 respective citizenships. *De Leon v. Aurora Loan Servs.*, No. cv-09-8389, 2009 WL
 21 5065254, at *1 (C.D. Cal. Dec. 15, 2009) (“To establish the citizenship of a limited
 22 liability company, Defendant must, at a minimum, allege the citizenship of all
 23 members of the limited liability company.”). GS Group alleges that the sole
 24 member-owner of Nursery Products is Synagro-WWT, which is a Maryland
 25 corporation. Grant Decl. ¶ 4; Hammonds Decl., Ex. 1. Therefore, Nursery Products

26 ³ The FAC alleges that Synagro-WWT’s principal place of business is in Houston,
 27 Texas. FAC ¶ 10. This would still establish complete diversity from Plaintiffs.

28 ⁴ The same rule would apply even if Nursery Products were a limited liability
 partnership as misnamed in the FAC. *Johnson*, 437 F.3d at 899; *see* FAC ¶ 9.

is deemed a citizen of Maryland for the purposes of establishing diversity jurisdiction.

16. Doe Defendants' Citizenship: The citizenship of fictitiously named defendants is disregarded when establishing diversity jurisdiction under 28 U.S.C. § 1332. *See* 28 U.S.C. § 1441(b)(1); *see also Bryant v. Ford Motor Co.*, 886 F.2d 1526, 1528 (9th Cir. 1989) (discussing same rule as previously codified in § 1441(a)).

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000

17. The notice of removal may assert the amount in controversy where the complaint seeks nonmonetary relief, or where a money judgment is sought but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded. 28 U.S.C. § 1446(c)(2)(A).

Removal is proper on the basis of the asserted amount if the Court finds by a preponderance of the evidence that the amount in controversy for an individual plaintiff would exceed \$75,000. 28 U.S.C. § 1446(c)(2)(B); *Urbino v. Orkin Servs. of Cal., Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013); *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005). This inquiry is directed at “the amount of damages *in dispute*” at the time of removal based on the plaintiff’s claims, *Kroske*, 432 F.3d at 980 (emphasis added), “whatever the likelihood that she will actually recover them.” *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018) (“[T]here is no question that [those damages] are ‘at stake’ in the litigation.”).⁵ The amount in controversy is calculated per plaintiff and “may include ‘damages (compensatory, punitive, or otherwise) and the cost of complying with an injunction, as well as attorneys’ fees[.]’” *Id.* at 416; *see also Urbino*, 726 F.3d at

⁵ In addressing the amount in controversy, GS Group disputes Plaintiffs' allegations and is not admitting liability or that Plaintiffs are entitled to any damages from GS Group. GS Group reserves the right to deny Plaintiffs' allegations in their entirety and challenge the actual damages in subsequent proceedings and at trial. See *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015).

1 1122; *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1121 (9th Cir. 2014)
 2 (permitting aggregation between plaintiffs only under Class Action Fairness Act).
 3 When the amount in controversy is not “facially apparent” from the complaint, “the
 4 court may consider facts in the removal petition” to determine the potential
 5 damages at issue. *Kroske*, 432 F.3d at 980 (quoting *Singer v. State Farm Mut. Ins.*
 6 *Co.*, 116 F.3d 373, 377 (9th Cir. 1997)).

7 18. In this proposed civil action, Plaintiffs’ prayer for relief includes
 8 nonmonetary relief. FAC at 37 (seeking a “permanent injunction” against
 9 Defendants requiring them to, among other things, “abate the nuisance” and “repair
 10 and restore areas impacted by the release of toxic materials”). Furthermore, under
 11 California law, a plaintiff may recover damages in excess of the amount demanded.
 12 *Greenup v. Rodman*, 42 Cal.3d 822, 827 (1986) (“[T]he court is not bound by the
 13 demand of the complaint, but may award any relief consistent with the case made
 14 by the plaintiff.”); Cal. Code of Civ. Proc. § 580(a). GS Group may therefore assert
 15 the amount in controversy in its notice of removal.

16 Although the FAC fails to demand a specific sum, the amount in controversy
 17 exceeds \$75,000 per plaintiff. In an email to GS Group’s counsel dated October 9,
 18 2023, Plaintiffs’ counsel represented that “they anticipate seeking more than
 19 \$75,000 in damages per plaintiff in this case, inclusive of attorneys’ fees and
 20 injunctive relief.” Hammonds Decl. ¶ 3. As a result, Plaintiffs “do not contest the
 21 existence of diversity jurisdiction.” *Id.* Under Ninth Circuit law, this admission
 22 alone is sufficient to establish the amount in controversy exceeds \$75,000 as
 23 required for diversity jurisdiction. “Such a concession is tantamount to a plaintiff
 24 expressly alleging damages in excess of the jurisdictional amount, which [the Court
 25 may] accept as the amount in controversy if done in good faith.” *Chavez*, 888 F.3d
 26 at 416. “Where the plaintiff filed the case in state court, and did not seek the federal
 27 forum, then the plaintiff’s formal judicial admission that the amount in controversy
 28 exceeds [the jurisdictional minimum] has the effect of defeating the plaintiff’s

1 choice of forum.” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th
 2 Cir. 1997) (affirming denial of remand motion because district court reasonably
 3 relied on similar admission in concluding jurisdictional requirement was satisfied).
 4 As in *Singer*, Plaintiffs have filed personal injury claims, for which California law
 5 prohibits plaintiffs from stating the amount in controversy in a complaint. Cal.
 6 Code Civ. Proc. § 425.10(b); *see, e.g.*, FAC ¶ 2. Especially “[i]n this context, where
 7 state law prohibited plaintiff from stating the amount in controversy in the
 8 complaint, the district judge has discretion to accept the admission as establishing
 9 it.” *Singer*, 116 F.3d at 376.

10 19. As explained below, “the plausibility of the admission” based on the
 11 FAC’s allegations and other evidence further supports jurisdiction. *Singer*, 116 F.3d
 12 at 377. GS Group provides the following additional analysis of potential damages
 13 (without admitting liability or that any Plaintiff is entitled to the relief sought)
 14 based on the allegations in Plaintiffs’ FAC and judicially noticeable facts to further
 15 demonstrate that the FAC puts in controversy a sufficient amount for removal under
 16 28 U.S.C. § 1332(a). “[T]he defendant’s showing on the amount in controversy
 17 may rely on reasonable assumptions” about its damages exposure. *Acad. of Country*
 18 *Music v. Cont’l Cas. Co.*, 991 F.3d 1059, 1069 (9th Cir. 2021) (quoting *Arias v.*
 19 *Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir. 2019)); *see also Pretka v.*
 20 *Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010) (permitting
 21 “reasonable deductions, reasonable inferences, or other reasonable extrapolations”);
 22 *Behrazfar v. Unisys Corp.*, 687 F. Supp. 2d 999, 1004 (C.D. Cal. 2009) (relying on
 23 defendants’ good faith, conservative estimates). “[A] removing defendant is not
 24 obligated to ‘research, state, and prove the plaintiff’s claims for damages,’”
 25 *Narayan v. Compass Grp. USA, Inc.*, 284 F. Supp. 3d 1076, 1089-90 (E.D. Cal.
 26 2018); *see also Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 88-89
 27 (2014).

28

1 20. Even setting aside Plaintiffs’ counsel’s concessions, judicially
 2 noticeable facts, including the damages in dispute in “similar … cases”—reliance
 3 on which the Ninth Circuit has upheld in assessing jurisdiction, *Kroske*, 432 F.3d at
 4 980 (citing *De Aguilar v. Boeing Co.*, 11 F.3d 55, 58 (5th Cir. 1993))—demonstrate
 5 that the various categories of damages and injunctive relief sought by Plaintiffs
 6 push the amount in controversy well above \$75,000 per plaintiff.

7 **21. Plaintiffs’ request for punitive damages alone places the amount in**
8 controversy beyond \$75,000 per plaintiff: “It is well established that punitive

9 damages are part of the amount in controversy in a civil action.” *Gibson*, 261 F.3d
 10 at 945. “Punitive damages are intended to punish a defendant’s past misconduct and
 11 deter future wrongful acts.” *E.E.O.C. v. Farmer Bros. Co.*, 31 F.3d 891, 904 (9th
 12 Cir. 1994) (citing *Neal v. Farmers Ins. Exch.*, 21 Cal. 3d 910, 929 n.13 (1978)).
 13 “Under California law,” “the financial condition of the defendant” is one of several
 14 criteria a court or jury may consider in calculating punitive damages. *Id.* (including
 15 this criterion alongside “the severity of the defendant’s misconduct” and “the injury
 16 caused”).

17 22. Plaintiffs’ punitive damages requests will by themselves exceed
 18 \$75,000 per plaintiff. GS Group is a leading global financial services firm that
 19 reported net earnings in 2022 close to \$11 billion. Hammonds Decl., Ex. 3 at 21
 20 (GS Group’s 2022 Form 10-K). The Complaint requests “punitive and exemplary
 21 damages … to punish or set an example of Defendants and deter such behavior by
 22 Defendants and others in the future.” FAC ¶ 101. Plaintiffs allege Defendants’
 23 wrongful acts and/or omissions “were done maliciously, oppressively, fraudulently,
 24 and/or in conscious disregard of the health and safety of Plaintiffs and their
 25 community,” *id.* ¶ 97, and have resulted in “thousands of individuals” being
 26 “exposed to elevated levels of burnt biosolids and other contaminants,” *id.* ¶ 2. The
 27 Complaint further alleges that the Facility has repeatedly violated relevant safety
 28

1 regulations and experienced “five other compost fires” in recent years before the
 2 one at issue in this case. *Id.* ¶ 54.

3 23. Given GS Group’s financial condition (even without considering the
 4 financial condition of other Defendants), the conduct alleged, and the community-
 5 wide harm allegedly caused, there is no doubt that Plaintiffs’ punitive damages
 6 request places the amount in controversy well over \$75,000. Juries have awarded
 7 far more in similar cases involving pollution from industrial activity. *Compare, e.g.,*
 8 *Orjias v. Stevenson*, 31 F.3d 995, 1011, 1014 (10th Cir. 1994) (punitive damages
 9 around 0.2 percent of defendant’s net worth, with each of 12 plaintiffs receiving
 10 \$156,000 based on actual damages as low as \$10,000); *McKiver v. Murphy-Brown,*
 11 *LLC*, 980 F.3d 937, 946 (4th Cir. 2020) (\$5 million in punitive damages, capped to
 12 \$2.5 million under state law, awarded to 23 plaintiffs who each received \$75,000 in
 13 compensatory damages); *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965,
 14 978 (1993) (\$2.6 million in total punitive damages awarded to four landowners).
 15 Within the Central District, even torts by individual defendants can result in
 16 punitive damages exceeding \$75,000. *See Crawford v. Cnty. of Orange*, No. 16-cv-
 17 01503, 2018 WL 3121883 (C.D. Cal. Apr. 25, 2018) (\$250,000 in punitive
 18 damages awarded to individual counterclaimant based on “[c]ourthouse brawl”).
 19 Accordingly, the punitive damages at stake here alone satisfy the jurisdictional
 20 minimum.

21 24. **Plaintiffs’ request for attorneys’ fees alone places the amount in**
22 controversy above \$75,000 per plaintiff: “[T]he amount in controversy
 includes ... attorney[s’] fees if authorized by statute or contract.” *Kroske*, 432 F.3d
 24 at 980. The FAC asserts a request for attorneys’ fees (FAC at 38), and Plaintiffs
 25 will seek fees exceeding \$75,000 per plaintiff. Plaintiffs’ attorneys, Cotchett, Pitre
 26 & McCarthy, LLP, have regularly requested attorneys’ fees in the millions of
 27 dollars, including in cases that led to settlement. *See* Hammonds Decl., Ex. 4 at 26
 28 (Cotchett asserting \$2,393,007.50 lodestar for 4,249.8 hours of legal work);

1 Hammonds Decl., Ex. 5 at 55 (\$9,437,778.00 lodestar for 17,412.62 hours of legal
 2 work); Hammonds Decl., Ex. 6 at 103 (requesting \$1,494,135 fee based on
 3 \$4,998,897 lodestar for 11,751 hours of legal work). Analyzing Cotchett's lodestar
 4 against total hours worked, Cotchett frequently requests fees using a lodestar with
 5 \$500 hourly rates. Assuming a similar calculation here, Cotchett's lodestar in the
 6 present action would touch \$75,000 after only 150 hours of legal work, something
 7 that may have already happened. In any event, for a case of the nature described in
 8 the Complaint, Cotchett would work more than 150 hours per plaintiff on this case
 9 even if the case ends in settlement. *See, e.g.*, Dkt. 1, Ex. A at 67 (civil case cover
 10 sheet designating the action as provisionally complex civil litigation with “[l]arge
 11 number of separately represented parties,” “[e]xtensive motion practice,” a
 12 “[s]ubstantial amount of documentary evidence,” and a “[l]arge number of
 13 witnesses”). Accordingly, Plaintiffs' request for attorneys' fees alone places the
 14 amount in controversy above \$75,000. *See also Stanton Rd. Assocs. v. Lohrey
 15 Enters.*, No. C890947, 1991 WL 632301 (N.D. Cal. Apr. 15, 1991) (one plaintiff
 16 awarded \$389,925 in consequential damages and \$126,198 in attorney's fees after
 17 the defendant's commercial dry-cleaning business contaminated neighboring
 18 property owned by plaintiff).

19 **25. Plaintiffs' other requested relief also places the amount in
 20 controversy well above \$75,000:** Plaintiffs' other requested relief also
 21 demonstrates the amount in controversy will exceed \$75,000. GS Group notes just a
 22 few examples below.

23 **26. Damages for personal injuries.** Plaintiffs allege they have suffered
 24 numerous damages “including but not limited to … headaches, vomiting, nausea,
 25 asthma and other respiratory problems,” FAC ¶ 90, as well as “discomfort,
 26 annoyance, anxiety, fear, worries, and stress attendant to the interference with
 27 Plaintiffs' occupancy, possession, use, and/or enjoyment of their property,” *id.*
 28 ¶ 123. In a case involving similarly noxious odors, *without* the kinds of allegations

of physical illness here, each plaintiff received \$75,000 in compensatory damages on their nuisance claims. *McKiver*, 980 F.3d at 946, 955 (industrial hog harm). In *Orjas*, where the plaintiffs experienced “physical illness, annoyance, inconvenience, and discomfort” and ultimately vacated their homes, 31 F.3d at 999—a reasonable outcome here considering Plaintiffs’ allegations that they have needed to “relocate,” FAC ¶ 149—actual damages ranged between \$10,000 and \$98,320 per plaintiff, *Orjas*, 31 F.3d at 999. And in yet another case, where four landowners were “subjected to prolonged exposure to certain carcinogens” but did not presently suffer any cancerous or precancerous condition, the plaintiffs were awarded \$800,000 for their lifelong fear of cancer and resultant emotional distress, \$269,500 for psychiatric illness, and \$108,100 “for the general disruption of their lives and the invasion of their privacy.” *Potter*, 6 Cal. 4th at 975, 978. Compare FAC ¶¶ 81, 90 (alleging the air contaminants from the Facility not only place them at risk for illness and disease, but are presently causing them symptoms). These and other comparator cases demonstrate that the amount in controversy exceeds \$75,000 per plaintiff. See, e.g., *Schaeffer v. Gregory Vill. Partners L.P.*, No. 3:13-cv-04358, 2015 WL 10553230 (N.D. Cal. Nov. 23, 2015) (awarding two plaintiffs \$706,500 for contaminated air, soil, and water under theories including public nuisance, private nuisance, trespass, negligence, and ultrahazardous activity); *Walnut Creek Manor, LLC v. Mayhew Ctr., LLC*, No. 4:07-cv-05664, 2009 WL 3260096 (N.D. Cal. June 1, 2009) (one plaintiff awarded \$1,947,000 under theories of private nuisance, public nuisance, trespass, negligence, negligence per se, and strict liability after jury found that harmful chemicals were released from defendant’s property); *Stanton Rd. Assocs.*, 1991 WL 632301 (plaintiff awarded \$389,925 in consequential damages).

27. *Diminution in property value.* Plaintiffs allege they “have suffered and will continue to suffer the diminution of the value of their property.” FAC ¶ 96. The Census Bureau places the median value of owner-occupied homes in San

1 Bernardino County at \$370,700. Hammonds Decl., Ex. 7 at 124. Plaintiffs may well
 2 seek up to the full value of their home even if not precisely stated in the Complaint.
 3 *See Gibson*, 261 F.3d at 946 (explaining that “the potential for [certain] damages
 4 may still be considered for purposes of amount in controversy” even if “not
 5 explicitly request[ed]” in complaint); *Bradley v. Armstrong Rubber Co.*, 130 F.3d
 6 168, 171 (5th Cir. 1997) (plaintiffs sought to prove market value of homes had
 7 turned “negative” based on soil and water contamination).

8 28. *Medical monitoring.* Plaintiffs allege entitlement to medical
 9 monitoring because they “have been placed at an increased risk of contracting latent
 10 illness and disease, including but not limited to respiratory, cardiovascular,
 11 neurological, and mental health issues.” FAC ¶ 81. The value of the medical
 12 monitoring in dispute could reach upwards of tens of thousands of dollars per
 13 plaintiff. *See Potter*, 6 Cal. 4th at 978 (\$142,975 awarded to four plaintiffs for
 14 medical monitoring).

15 29. *Injunctive relief.* The amount in controversy also includes ““the cost of
 16 complying with an injunction.”” *Chavez*, 888 F.3d at 416. Plaintiffs seek broad
 17 injunctive relief, including establishing “a fund for the relocation of Plaintiffs and
 18 impacted residents,” which allegedly number in the thousands. FAC at 37; *see also*
 19 *id.* ¶ 1. A relocation fund for thousands of residents itself plainly satisfies the
 20 amount-in-controversy requirement. Documents available on San Bernardino
 21 County’s website suggest a corresponding relocation fund could top \$700,000: One
 22 proposed 2018 relocation plan’s schedule for fixed moving expense payments
 23 started at \$725 for the smallest moves and capped rental assistance post-move at
 24 \$7,200. Hammonds Decl., Ex. 8 at 138, 139. Given potential fund costs in addition
 25 to the other injunctive relief requested, the request for injunctive relief alone places
 26 the amount in controversy above \$75,000.

27
 28

VENUE

30. Venue is proper in the Eastern Division of the Central District of California pursuant to 28 U.S.C. §§ 84(c), 1391, and 1446(a). This action was originally brought in the Superior Court of California, San Bernardino County, located in the Central District's Eastern Division. 28 U.S.C. § 84(c)(1). Furthermore, the FAC alleges that the events giving rise to the action occurred in San Bernardino, California. FAC ¶ 7.

NOTICE OF REMOVAL

31. This Notice of Removal shall be served promptly on Plaintiffs' Counsel of Record and filed with the Clerk of the Superior Court of California, San Bernardino County.

32. In compliance with 28 U.S.C. § 1446(a), attached hereto as Exhibit A to this notice are copies of all state-court papers served herein, including the original complaint, FAC and Summons.

33. As stated above, all Defendants have consented to GS Group's filing of this Notice of Removal.

Dated: October 16, 2023

ORRICK, HERRINGTON &
SUTCLIFFE LLP

By: /s/ Amari L. Hammonds
AMARI L. HAMMONDS
Attorney for Defendant
THE GOLDMAN SACHS GROUP, INC.